

Citation: *R. v. Larson*, 2023 YKTC 1

Date: 20230111
Docket: 22-05429
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Phelps

REX

v.

JARET LARSON

Appearances:
Kelly McGill
Jaret Larson

Counsel for the Territorial Crown
No one Appearing

REASONS FOR JUDGMENT

[1] Jaret Larson was issued a ticket under the *Summary Convictions Act*, RSY 2002, c. 210, for one offence contrary to s. 158 of the *Motor Vehicles Act*, RSY 2002, c. 153 (“MVA”), and one offence contrary to s. 9(1) of the *Highways Regulation*, O.I.C. 2002/174.

[2] This matter proceeded to trial on November 29, 2022, in the absence of Mr. Larson. The Crown made application to proceed *ex-parte* pursuant to s. 9 of the *Summary Convictions Regulation*, O.I.C. 2016/105, which states:

9. If defendant does not appear

(1) Subject to subsection (3), if a defendant does not appear in court in person or by agent at the time and place specified in an appearance notice, a justice may, on proof of service of the appearance notice

...

(b) upon application of the prosecutor, proceed immediately, in absence of the defendant, with a trial of any charge for which a not guilty plea has been entered...

[3] The Crown satisfied the Court that Mr. Larson entered a plea of not guilty to both counts on the ticket, was properly served, and was aware of the trial date. The Crown application was granted, and the matter proceeded to trial with the Crown calling one witness, Michael Kasprzak, the Manager of Carrier Compliance.

[4] Mr. Kasprzak testified that he was on duty on August 2, 2022, at approximately 3:00 p.m., when he witnessed a commercial vehicle, that he believed was required to stop at the weigh scales, proceed in a northbound direction past the weigh scales in the City of Whitehorse without stopping. He and a colleague pursued the truck, ultimately locating it on Industrial Road. Mr. Kasprzak confirmed that Mr. Larson was the driver of the vehicle, and that the vehicle exceeded a registered gross vehicle weight of 4,500 kilograms, requiring him to stop at the weigh scales pursuant to s. 9(1) of *Highways Regulation*, which states:

9. Reporting requirements

(1) The driver of

(a) a vehicle exceeding a registered gross vehicle weight of 4,500 kilograms, or

(b) a farm vehicle (as defined under the *Motor Vehicle Act*) on a highway,

must report to each scale designated by the Minister for the purpose unless a sign or signal authorized by an officer instructs that they need not report.

[5] Mr. Kasprzak confirmed in his testimony that the signage in place on August 2, 2022, at the weigh scale in Whitehorse, required the vehicle to stop.

[6] Mr. Kasprzak directed Mr. Larson to return with the vehicle to the weigh scales and followed him along the route. When Mr. Larson arrived at the top of the Two Mile Hill at the intersection with the Alaska Highway, he stopped for a red light and was in the right-hand lane meant for traffic proceeding straight. To his left were two additional lanes for travel in the same direction. To his immediate left was a lane also meant for traffic proceeding straight through the intersection. The second lane in the same direction, farthest to his left, was a left-turn lane meant for vehicles to turn left onto the Alaska Highway. Mr. Larson waited for the light to turn green, then proceeded to execute a left-hand turn, crossing the inside lane and the left-turn lane in the process of entering the Alaska Highway southbound. This left turn executed by Mr. Larson was contrary to s. 158 of the *MVA*, which states:

158 Left turns

(1) A driver intending to turn left from a two-way highway onto another two-way highway shall make the turn

(a) by driving to the right of and as closely as practicable to the centre line of the highway while approaching the intersection and turning; and

(b) on leaving the intersection by driving to the right of and as closely as practicable to the centre line of the highway then entered,

unless a traffic control device otherwise directs or permits.

[7] Mr. Kasprzak's testimony satisfied the Court that Mr. Larson committed the acts that constitute the offences charged. However, a question arose in the proceedings as to whether Mr. Kasprzak had the authority to issue the charges under the *Highways Regulation* and the *MVA*. The authority of Mr. Kasprzak, as the manager of Carrier Compliance, to enforce the provisions of the *Highways Regulation* is found in s. 37, which states:

Persons occupying the following positions in the Department of Highways and Public Works may issue tickets under the *Summary Convictions Act* for the prosecution of offences under the *Highways Act* or this Regulation:

- (a) Manager, Carrier Compliance;
- (b) Assistant Managers, Carrier Compliance;
- (c) Manager, National Safety Code;
- (d) National Safety Code Inspectors; and
- (e) Compliance Officers.

[8] Mr. Kasprzak had the requisite authority to issue the charge contrary to s. 9 of the *Highways Regulation* and I find Mr. Larson guilty of the offence, being Count 2 on the ticket.

[9] Mr. Kasprzak's authority to enforce offences contrary to the *MVA* is less clear. The authority for enforcement under the *MVA* is derived from the designation as an

“officer” under the legislation. This analysis requires a review of s. 1 of the *MVA* and the definition of “officer”:

In this Act,

“officer” means a member of the Royal Canadian Mounted Police or a person appointed pursuant to section 2 to administer or enforce all or any portion of this Act, including those persons employed in connection with the operation of weigh scales established pursuant to the *Highways Act*;

[10] If Mr. Kasprzak is an officer, then further analysis is required to confirm that he has the authority as an officer to enforce s. 158 of the *MVA*. If Mr. Kasprzak is not an officer, then he does not have any authority to enforce s. 158 under the *MVA*.

[11] According to Ruth Sullivan in *Sullivan on the Construction of Statutes*, 6th ed, (Markham LexisNexis Canada, 2014), p. 28, “in interpreting any text, the ordinary meaning as understood by the reader is assumed to correspond with the meaning intended by the writer”. She goes on to state:

As understood and applied by modern courts the ordinary meaning rule consists of the following propositions:

1. It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.
2. Even if the ordinary meaning is plain, courts must take into account the full range of relevant contextual considerations including purpose, related provisions in the same or other Acts, legislative drafting conventions, presumptions of legislative intent, absurdities to be avoided and the like.
3. In light of these considerations, the court may adopt an interpretation that modifies or departs from the ordinary meaning, provided the interpretation adopted is plausible and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.

This formulation of the ordinary meaning rule is closely related to Driedger's modern principle. It emphasises that interpretation properly begins with ordinary meaning – with reading words in their grammatical and ordinary sense – but does not stop there. Interpreters are obliged to consider the total context of the words to be interpreted in every case, no matter how plain those words may seem upon initial reading.

[12] I find that the ordinary meaning of the definition of “officer” is that there are two categories of officers:

1. a member of the Royal Canadian Mounted Police; and
2. a person appointed pursuant to s. 2 to administer or enforce all or any portion of the *MVA*, including those persons employed in connection with the operation of weigh scales established pursuant to the *Highways Act*.

[13] The Crown does not dispute this interpretation of the ordinary meaning, but argues that I must go further in my analysis, relying on the following quote from the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27:

20 At the heart of this conflict is an issue of statutory interpretation. Consistent with the findings of the Court of Appeal, the plain meaning of the words of the provisions here in question appears to restrict the obligation to pay termination and severance pay to those employers who have actively terminated the employment of their employees. At first blush, bankruptcy does not fit comfortably into this interpretation. However, with respect, I believe this analysis is incomplete.

21 Although much has been written about the interpretation of legislation...Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in

their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

...

22 I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act “shall be deemed to be remedial” and directs that every Act shall “receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit”.

23 Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the *ESA*, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. ...

[14] The Crown submits that despite the ordinary meaning of the definition of “officer” in the *MVA*, the “legal meaning” should expand the definition to create three categories:

1. a member of the Royal Canadian Mounted Police;
2. a person appointed pursuant to s. 2 to administer or enforce all or any portion of the *MVA*; and
3. those persons employed in connection with the operation of weigh scales established pursuant to the *Highways Act*.

[15] They further submit that the third category should be adapted to read “the officials who operate the weigh scales.” This additional change significantly departs from the clear language used by the legislature in the definition. The legislature’s use of the words “persons employed in connection with the operation of weigh scales” does not suggest a category of employee. Rather, it intentionally states “persons employed”, which would encompass all personnel, from administrative to enforcement. It does not

follow that the legislature chose the language in the definition with the intention of it meaning only those “officials who operate the weigh scales”.

[16] The definition of “officer” in the *MVA* does not involve complex subject matter or require complex drafting. The creation of three distinct categories of “officer”, as urged by the Crown through a legislative interpretation exercise, would have been easily drafted in a manner that is irrefutable. The legislature instead drafted the definition to create two categories as noted above. The additional language of “those persons employed in connection with the operation of weigh scales” can logically only be read to mean that, out of the pool of personnel employed in connection with the operation of the weigh scale, for any to be officers they would have to be appointed pursuant to s. 2 of the *MVA*. The applicable subsections of s. 2 of the *MVA* are:

(1) The Commissioner in Executive Council may appoint a registrar of motor vehicles, a deputy registrar of motor vehicles, and any other officers and employees required for the administration of this Act.

...

(3) Any officer or employee appointed pursuant to subsection (1), except the registrar or the deputy registrar, shall have only those powers and duties with respect to the administration of this Act as the Commissioner in Executive Council may prescribe. [emphasis added]

[17] The Crown advanced an argument on the presumption against tautology, a principle of statutory interpretation applied by Justice Gower in *Hy’s North*

Transportation Inc. v Finlayson Minerals Corporation dba Yukon Zinc Corporation, 2016

YKSC 43:

43 The second principle of statutory interpretation applicable here is the presumption against tautology. This is referred to by Ruth Sullivan in her text at 8.23:

It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain. Every word in a statute is presumed to make sense and have a specific role to play in advancing the legislative purpose....

...

... For this reason courts should avoid, as much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant.

[18] The Crown, in her submissions dated December 9, 2022, argued, based upon the presumption against tautology, that:

...If the legislature intended for weigh scale personnel to be treated in the same manner as “other persons” (that require an appointment under section 2), then there would have been no need to include the highlighted words at all; the redundancy is not necessary. Weigh scale personnel are obviously persons who may be appointed pursuant to section 2. ...

[19] While I agree that these personnel could otherwise be appointed under s. 2 of the *MVA*, the addition of the words in the definition clarifies that an Order in Council (“O.I.C.”) is required in order to provide authority to persons employed in connection with the operation of weigh scales established pursuant to the *Highways Act*, RSY 2002, c. 108, for them to have the required authority under the *MVA*. The emphasis in the definition is further explained by the fact that, as pointed out by the Crown in her submissions:

Of particular relevance to this matter is the *National Safety Code Regulation* (“*N.S.C. Regulation*”), a regulation made under the *M.V.A.* that is the cornerstone of Yukon's commercial vehicle regulatory framework. The purpose of the *N.S.C. Regulation* is to import national standards for the commercial trucking industry into Yukon law. These standards created the rules commercial carriers must comply with to ensure road safety and facilitate the safe and efficient movement of people and goods across Canada. ...

...

Only "authorized inspectors" can enforce the N.S.C. Regulation, and one is only an "inspector" if they are also an "officer" under the M.V.A.

[20] Given the significance of this regulation to certain "persons employed in connection with the operation of weigh scales", the addition of the wording in the definition of "officer" cannot be considered as redundant and unnecessary. The wording highlights the importance of applying s. 2 of the *MVA* to create a category of officers with specified powers that are employed in connection with the operation of the weigh scales.

[21] The Crown further argues that interpreting the term "officer" as including the weigh scale personnel is supported by the presumption of coherence and submits that "several aspects of the legislative scheme do not fit together logically and come into conflict with one another if weigh scales personnel are lumped in with other persons who must be appointed under section 2." The argument is based on the difficulties with enforcement that would arise if weigh scale personnel were not considered officers.

[22] I do not consider the legislative scheme to be complex or fraught with inconsistency based on the interpretation of the definition of "officer". Section 2 of the *MVA* sets out a clear process for providing officer authorities to weigh scale personnel. Section 249 of the *MVA* provides a process for officers to be given peace officer authorities under the *MVA*. The authorities granted under s. 2 and s. 249 can be accomplished under one O.I.C., as was done for airport security officers in *Airport Parking Appointments Regulation*, O.I.C. 2009/119.

[23] The Crown, in her submissions, advanced an argument on the principle that the legislature can be presumed not to have intended absurd results. The Crown argument on this principle is as follows:

Another well-established principle of statutory interpretation is that the legislature does not intend to produce absurd consequences. The exercise of statutory interpretation does not happen in a vacuum; it has real-life consequences for individuals, entities and communities. Interpretations that produce absurd results should be avoided.

If "officer" is interpreted NOT to include weigh scale personnel, the following consequences arise:

- O.I.C. 2002/122 is rendered meaningless and unnecessary.
- The Manager, National Safety Code and the National Safety Code Inspectors will be unable to enforce the N.S.C. Regulation. No designation appoints any other persons as "officers" to enforce the N.S.C. Regulation. Absent legislative action, enforcing the entire regulatory framework that governs commercial carriers in Yukon will be left solely to the RCMP.

Crown submits that these consequences are correctly characterized as absurd and support an interpretation by the court of the "officer" definition that includes weigh scale personnel.

[24] This principle of statutory interpretation was also applied by Justice Gower in the *Hy's* decision as follows:

45 The third principle of statutory interpretation which applies to this argument is that the Legislature can be presumed not to have intended to create absurd results. The broad interpretation of s. 2(1)(b) urged by *Hy's North* would result in lien rights being extended to anyone that provided services in connection with a mining operation, irrespective of whether such service had anything to do with the actual recovery of a mineral or the improvement of the mine. The resulting absurdity, in my view, is that this would extend lien rights to any contractor that provided services to Yukon Zinc, including warehouse operators, shipping companies, insurers, or even lawyers and financiers. In other words, virtually every creditor could assert a claim of lien against a mining company's primary assets.

This would increase uncertainty for lenders and detract from the “attractive investment climate” which the Legislature was trying to create through the amendments to the *MLA*.

[25] The absurdity noted by the Crown does not arise out of the legislative interpretation, rather, the absurdity arises out of the oversight of not addressing the weigh scale personnel authorities under s. 2 of the *MVA*. It would be an absurd consequence, in my view, if all employees “employed in connection with the operation of weigh scales”, which could include administrative or other employees that do not have enforcement responsibilities, were considered to be officers for the purpose of enforcement. The legislative scheme is not complex, and a properly drafted O.I.C. would ensure that the appropriate weigh scale personnel are appointed as officers with the necessary authorities to fulfill their mandate.

[26] The *MVA* is silent on what authority an “officer” has for enforcement purposes. The section that speaks to authority of an officer is s. 2(3) wherein it states “[a]ny officer... appointed pursuant to subsection (1)...shall have only those powers and duties with respect to the administration of this Act as the Commissioner in Executive Council may prescribe.” It is s. 2 that addresses the appointment of government employees as officers and what powers they may exercise under the *MVA*, including the authority to issue *Summary Convictions Act* tickets. Absent the appointment under s. 2, it is not clear what authority, if any, “those persons employed in connection with the operation of weigh scales” would have if the Crown’s interpretation of the definition of “officer” was accepted.

[27] I find that the ordinary meaning of the definition of “officer” under the *MVA*, as set out above, prevails and that Mr. Kasprzak was not an officer with enforcement authority under the *MVA* on August 2, 2022. Given the lack of jurisdiction, the offence contrary to s. 158 of the *MVA*, being Count 1 on the ticket, is dismissed.

PHELPS T.C.J.